



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: February 4, 2004

COUNCIL DISTRICT: 1

SUBJECT: PDC03-061 PROTEST OF A MITIGATED NEGATIVE DECLARATION FOR A PLANNED DEVELOPMENT REZONING FROM CG COMMERCIAL GENERAL TO A(PD) PLANNED DEVELOPMENT (AND SUBSEQUENT PERMITS) TO ALLOW 79 SINGLE-FAMILY ATTACHED GARDEN TOWNHOUSE RESIDENTIAL UNITS AND DEMOLITION OF TWO EXISTING COMMERCIAL BUILDINGS (SARATOGA LANES BOWLING ALLEY AND WOLF CAMERA CENTER) LOCATED ON THE WEST SIDE OF SARATOGA AVENUE APPROXIMATELY 200 FEET SOUTHERLY OF GRAVES AVENUE.

BACKGROUND

This staff report addresses the protest of a Mitigated Negative Declaration for a Planned Development rezoning from CG Commercial General to A(PD) Planned Development (and subsequent permits) to allow 79 single-family attached garden townhouse residential units and demolition of two existing commercial buildings (Saratoga Lanes bowling alley and Wolf Camera Center) located on a 4.5-acre site on the west side of Saratoga Avenue approximately 200 feet southerly of Graves Avenue. If the Planning Commission upholds the Director's decision to adopt a Mitigated Negative Declaration, the proposed Planned Development rezoning will be considered by the Commission immediately following this item. A staff report for the Planned Development Zoning will be available prior to the public hearing.

The existing commercial building is approximately 45,000 square feet in size and was built in 1958. Surrounding land uses consist of single-family houses and a commercial building across Graves Avenue to the north, a gas station to the east and a shopping center (Westgate) across Saratoga Avenue to the east, a shopping center (West Valley Shopping Center) to the south, and offices to the west.

CEQA Mitigated Negative Declaration Requirements

A Mitigated Negative Declaration (MND) must be prepared in conformance with the California Environmental Quality Act (CEQA) of 1970, as amended. Public Resources Code Section 21064.5 and CEQA Guidelines Section 15070 state that a MND may be prepared if the Initial Study identifies a potentially significant effect for which the project proponent has made or agrees to make

project revisions that clearly mitigate the effects. Additionally, an MND may not be used if any substantial evidence indicates that the revised project with mitigation may still have a significant effect on the environment.

Mitigated Negative Declaration

On January 7, 2004, the Director of Planning, Building and Code Enforcement (PBCE) completed an Initial Study, and circulated an MND for the proposed project to property owners and occupants within 1,000 feet of the project site. The MND and Initial Study were available (1) at the Department of Planning, Building and Code Enforcement, (2) on line on the Department's website, (3) at the Main Martin Luther King Jr. Library, and (4) at the West Valley Branch Library. The public review period began on January 7, 2004, and ended on January 27, 2004.

Letters of Protest

On January 27, 2004, two letters protesting the adequacy of the MND were filed in the Department of Planning, Building and Code Enforcement. The letters were filed by:

- A. Jeffrey Hare, an attorney representing the Country Lane Neighborhood Association
- B. Stephen Pahl, an attorney representing the West Valley Shopping Center adjacent to the site.

The issues raised in the letters are discussed and addressed in the Analysis section, below. The letters themselves are attached to this report.

MND Protest Hearing Procedure

San Jose Municipal Code Section 21.06.030 sets forth the MND protest hearing procedure. If, after reviewing the protest, the Director of Planning adopts the Negative Declaration, the Planning Commission must hold a noticed public hearing on the MND protest to consider all relevant information and materials concerning whether the project may have a significant effect on the environment. The action of the Planning Commission in considering the protest is limited to environmental issues. If the Commission finds there is a "fair argument" based on substantial evidence that the project may have a significant effect on the environment, the Commission must require the preparation of an Environmental Impact Report. If the Planning Commission finds that the project will not result in a significant impact on the environment and upholds the action of the Director, the Negative Declaration becomes final and no further appeals on the matter may be considered.

ANALYSIS

The following is a response to the concerns raised in the letters of protest noted above.

A) RESPONSE TO COMMENTS RECEIVED FROM JEFFREY HARE, DATED JANUARY 27, 2004.

Comment 1: The traffic study fails to adequately evaluate full effect of Project traffic.

Staff Response: The traffic analysis in the Draft Initial Study was prepared in accordance with the standards set forth by the City of San José and the Congestion Management Program (CMP) of Santa Clara County. The study included an analysis of AM and PM peak-hour traffic conditions at intersections in the vicinity of the site. Traffic conditions at the study intersections were evaluated using the *Level of Service* (LOS) methodology. The traffic impacts of the project were evaluated against the thresholds of significance used by the City of San José, which are listed in Appendix G of the CEQA Guidelines and on Page 63 of the Initial Study.

The comment asserts that the following issues were not adequately addressed:

- ✍ Neighborhood cut-through traffic to and from the project site
- ✍ Traffic circulation at Country Lane School and Rogers Middle School
- ✍ Evaluation of other intersections along Graves Avenue; and
- ✍ Signalization of Teresita and Graves Avenue.

In response to concerns raised by the neighborhood association at the public community meetings in September and November, 2003, Chapter 6 of the Traffic Impact Analysis (TIA) prepared for the Initial Study (Appendix E of the Initial Study) evaluates the effect of traffic generated by the proposed residential development on the neighborhood to the north. All of the issues listed above have already been addressed in Chapter 6 of the TIA and in the Initial Study and were found to not result in significant traffic impacts, using the City's thresholds of significance.

As described in Appendix E of the Initial Study, the traffic trips anticipated to be generated by the project were based on the adopted *Vehicular Trip Generation Rates* from the City of San Jose, Department of Public Works - Transportation Division. The amount of traffic assigned to a given street is based on the origins and destinations of project trips (refer to Chapter 4 of Appendix E). There are two types of project-generated trips that could add traffic to the existing residential streets north of the site: 1) trips to and from Lawrence Expressway, north of Doyle Road; and 2) trips to and from the schools north of the site.

Neighborhood Cut-Through Traffic

Based upon existing travel patterns and the locations of complementary land uses, the TIA estimated that during the peak hours, approximately 25 percent of project traffic would travel to or originate from Lawrence Expressway. As stated on page 31 of the TIA, based on the trip distribution patterns in the TIA, approximately 16 peak-hour and 154 daily trips are projected to use Lawrence Expressway. Therefore, under a worst-case scenario which assumes that all of the trips use the neighborhood streets north of the site to access Lawrence Expressway, the project would add approximately one (1) trip every four minutes during the peak hour. This amount of traffic trips would not present a safety hazard or emergency access problem, and would not impact the level of service of any of these roadways (refer to Appendix E of the Initial Study).

As described on page 33 of Appendix E of the Initial Study, the overall average daily trip volumes on the busiest of the neighborhood streets (Teresita Drive) is only 64 percent of capacity with the addition of project traffic. The other streets carry fewer vehicle trips per day. While the addition of 16 vehicles in an hour from the project may be considered undesirable, the added traffic would not

result in a significant traffic impact. The fact that some project traffic would travel through the neighborhood is not a significant environmental impact under CEQA, according to the thresholds of significance identified on page 65 of the Initial Study, unless the volume of cut-through traffic results in LOS impacts, presents a safety hazard, or interferes with emergency vehicle access.

It should be noted that vehicular trips generated by the proposed project would be residential in nature and, as such, are not considered "cut-through" traffic along residential streets. Cut-through traffic is more appropriately defined as commercial- or industrial-oriented traffic that avoids commercial thoroughfares by using primarily residential streets.

LOS Evaluation of Other Intersections Along Graves Avenue

Because Teresita Drive is nearest to Saratoga Avenue and is the only through-street connecting Graves Avenue to Doyle Road, Teresita Drive carries more traffic (and is anticipated to carry more project-generated neighborhood traffic) than Crespi Drive or El Oso Drive. As stated on page 33 of the TIA, daily traffic volumes on Teresita Drive (counted in October, 2003) range from 1,200 to 1,600 vehicles per day, which is well within the range of typical residential streets in San José. The City's goal is to keep local residential street volumes below 2,500 vehicles per day (City of San José Department of Transportation administrative policy).

The intersection traffic count at the intersection of Graves Avenue and Teresita Drive was conducted in June 2003, when school was not in session. According to additional traffic counts conducted in October 2003 (since the TIA was published), when school was in session, all of the unsignalized intersections along Graves Avenue, north of the site, will continue to operate at LOS B with or without the proposed project (see attached table).

Other streets in the neighborhood carry less traffic than Teresita Drive, as shown on the attached table. These counts were supplied by the City of San Jose Department of Transportation. All counts were done when school was in session except for the count on Happy Valley.

As described on page 34 of the TIA, the traffic volumes at the Crespi Drive/Project Driveway and Graves Avenue intersection under background and project conditions do not warrant multi-way stop control (refer to Appendix E of the Initial Study). Therefore, by definition, this intersection operates at an acceptable LOS and would continue to operate at an acceptable LOS under project conditions. A specific evaluation of the operation of the Crespi Drive/Project Driveway/Graves Avenue and the El Oso/Graves Avenue intersections showed that the level of service of both of these unsignalized intersections under project conditions would continue to be LOS B. Therefore, the addition of project-generated traffic would not result in a significant traffic impact at either of these intersections.

Signalization of the Graves Avenue and Teresita Drive Intersection

Traffic volumes at the Graves Avenue/Teresita Drive intersection were evaluated against the *Caltrans Traffic Manual* criteria for warranting signalization. According to the peak-hour volumes projected at this intersection under project conditions, the signal warrant volumes would not be met (refer to Appendix E of the Initial Study).

Traffic Circulation at Schools

The comment suggests that there are concerns about child safety and traffic from parents driving children to the schools north of the site. As described on page 31 of Appendix E, based on the likely demographics of the future residents of the proposed project, the school district estimates that there would be 19 school age children living at the site. Assuming that all 19 go to Country Lane School or Rogers Middle School, and that each child is brought to school in an automobile during peak periods, this would add approximately 38 peak-hour trips. These trips would access the schools via the following roadways: Graves Avenue, Country Lane, Lassen Avenue, Brenton Avenue, Crespi Drive, and Teresita Drive. The TIA concluded (on page 31 of Appendix E), that assuming each of these trips depart and return during the same hour, the above-mentioned streets would experience a maximum average increase of one additional vehicle trip every 95 seconds during the busiest hour of the day. According to additional traffic counts conducted since the TIA was published, and during school days, all of the Graves Avenue unsignalized intersections north of the site will continue to operate at LOS B with or without the proposed project. While parents driving children to school will contribute incrementally to traffic on neighborhood streets, these trips would not exceed the capacity of the streets (as described above) and are not considered a significant traffic impact under City policy (refer to Appendix E of the Initial Study).

The comment infers that a fair argument can be made that the project may have a significant impact due to neighborhood cut-through traffic. There is no evidence, such as traffic data, provided by the commentor to substantiate the "fair argument" assertion. The comment alleges that the City ignored traffic data collected and provided by the neighborhood association. This is incorrect; the City and the applicant requested copies of this information, so that it could be compared with the data in the TIA. However, the neighborhood association failed to provide any supplemental traffic information to the City. Reiterating, it should be noted that vehicular trips generated by the proposed project would be residential in nature and, as such, are not considered "cut-through" traffic along residential streets.

As described above, the small amount of additional traffic generated by the project that may use the neighborhood streets will not result in any significant safety, access, or intersection level of service impacts. The overall amount of traffic on the streets, with the project, is still well within the normal range for San José streets and the capacities of these streets.

The comment also suggests that the City has deferred the evaluation of mitigation measures until a later date. This is incorrect. All mitigation measures identified in the Initial Study have been agreed to by the applicant and have been incorporated into the proposed project. The applicant signed a "Mitigation Agreement" with the City, agreeing to all the mitigation measures identified in the Initial Study, prior to public circulation of the Initial Study, in accordance with the intent of CEQA Guidelines Sections 15070(b) and 15126.4.

While the project would not result in significant traffic impacts according to the City's thresholds of significance (refer to page 65 of the Initial Study), the neighborhood association has expressed interest in traffic calming features, such as speed bumps and a permit parking program, in the neighborhood north of the site. The Department of Transportation has agreed to evaluate traffic calming features for this area, which will be designed and implemented based upon future input from

the community, independent of whether or not the proposed residential project is approved. As described above, the project would not result in significant traffic impacts to the neighborhood streets, and therefore, implementation of traffic calming features is not “mitigation” under CEQA for significant environmental impacts. For this reason, the fact that these features are not explicitly defined at this point in time does not constitute an inappropriate deferral of mitigation according to CEQA Guidelines Section 15070.

Based on the above discussion, it is concluded that this comment does not present any significant new information requiring substantial revision of the Mitigated Negative Declaration, in accordance with CEQA Guidelines Section 15073.5.

Comment 2: The parking analysis is unrealistic and the supply is inadequate.

Staff Response: As stated in the comment and in the Initial Study (page 5), the project proposes at least 219 off-street parking spaces, which will exceed the City’s requirement of 204 spaces by 15 spaces. In addition, Graves Avenue will be re-stripped to permit parking on both sides along the site frontage, which will yield an additional 20 parking spaces. The parking requirements in the City’s *Residential Design Guidelines* are based on various studies of parking demands in higher-density residential neighborhoods throughout San José. Conformance with the parking requirements in the Residential Design Guidelines is the City’s threshold for providing adequate parking. Therefore, no “mitigation” under CEQA is required. (It should be noted that a shortage of parking is not considered an environmental impact under CEQA, unless the condition substantially affects adjacent land uses [*i.e.*, results in inadequate access or safety concerns]). This comment represents the author’s opinion that the analysis of parking in the Initial Study is not adequate, and that the proposed supply is inadequate, however, no evidence of inadequacy or alternative standard for adequacy of supply is offered.

It is anticipated that some residents and guests will elect to park in on-street parking spaces. The use of such available on-street parking spaces is not an environmental impact under CEQA, according to the City’s thresholds of significance. The project proposes parking in excess of the City’s requirements, therefore, the conclusion on page 65 of the Initial Study that the project would result in adequate parking is correct.

Comment 3: The MND does not address impacts from changes in truck traffic.

Staff Response: As described on page 46 of the Initial Study, most delivery trucks traveling to the West Valley Shopping Center travel westbound on Graves Avenue, and enter the Orchard Supply Hardware or PW Market loading dock areas west of the project site (near Orchard Supply Hardware). Trucks are able to exit from the PW Market’s loading dock area directly to Saratoga Avenue south of the site. However, under existing conditions (with large, little-used surface parking lots surrounding the bowling alley building), some delivery trucks cut through the project site to and from the PW Market’s loading dock area. While development of the proposed project would eliminate the ability of trucks to cut through the project site, there is no evidence to suggest that the project would increase the number of truck deliveries or would substantially negatively affect delivery truck access.

This comment also asserts that the City has deferred mitigation measures such as the permit parking program. As described in the response to comment 1 above, the investigation of permit parking is not “mitigation” under CEQA for any significant traffic impact (refer to the response to comment 1, above).

Comment 4: The MND fails to address impacts on emergency and public services.

Staff Response: This comment raises questions about the project’s individual impact on emergency and public services, as well as the potential cumulative impact on the City’s ability to provide utilities and services. These issues are addressed separately below.

Project’s Public Services Impacts

Unlike public facilities and utilities, public services are provided to the community as a whole, usually from a central location or from a defined set of nodes. The resource bases for delivery of the services, including the physical service delivery mechanisms, are financed on a community-wide basis, usually from a unified or integrated financial system. The service delivery agency can be a city, county, service or other special district. Usually, new development will create an incremental increase in the demand for these services; the amount of the demand will vary widely, depending on both the nature of the development (residential vs. industrial, for instance) and the type of service, as well as on the specific characteristics of the development (such as senior housing vs. family housing). The impact of a particular project on public services will, therefore, generally be a fiscal impact. By increasing the demand for a service, a project could potentially cause an eventual increase in the cost of providing the service. CEQA does not require an analysis of fiscal impacts (CEQA Guidelines Section 15131).

CEQA analysis is required if the increased demand is of sufficient size to trigger the need for a new facility (such as a school or fire station), because the new facility would have a physical impact on the environment. CEQA requires that an environmental document then identify and evaluate the physical impacts on the environment that such a facility would have. To reiterate, the impact that must be analyzed in an environmental document is the impact that would result from constructing a new public facility (should one be required), not the fiscal impact of a development on the capacity of a public service system.

✍ *Fire and Police Service:* As described in the Initial Study, the project site is a developed, infill site, located within a highly urbanized area. The site is located between existing commercial and residential uses. Because the site is located within an urban area, and the existing bowling alley is currently served by nearby fire and police facilities, the redevelopment of this site with 79 residential units is not anticipated to substantially increase calls for service or to require the construction of new facilities. Therefore, the project would not result in significant environmental impacts upon fire or police service. In fact, when compared with the existing bowling alley, with its hidden parking lot areas behind the building, the proposed residential development is anticipated to result in little or no increase in calls for police or fire service.

✍ *Schools:* As described on pages 52-54 of the Initial Study, according to the Moreland School District, the schools near the site have the capacity to serve the number of students anticipated to be “generated” by the proposed residential units at the site. Therefore, the project would not

result in a physical impact (*i.e.*, exceeding capacity and requiring new facilities) upon schools in the site vicinity, according to the thresholds of significance used by the City. Dr. Les Adelson, superintendent of the Moreland School District, has stated in personal communication that changes to be brought about by the upcoming merger of the currently separate Easterbrook School and Discovery School will have no impact on the future availability of student enrollment capacity at Country Lane School. Students living within the Country Lane enrollment boundaries (which include the project site) will continue to have first priority for enrollment at Country Lane School.

✍ *Parks, Recreation and Libraries:* The Initial Study identifies (on page 52) seven different public park facilities within approximately two miles of the site. In addition, the project proposes approximately 20,000 square feet of common open space on the site, which exceeds the City's requirements for this development (of about 11,850 square feet) by about 8,150 square feet, or 69 percent (refer to Figure 4 of the Initial Study). For these reasons, the Initial Study correctly concluded on pages 54 and 55 that the project would not result in significant physical impacts upon parks and recreation facilities in the area. The West Valley Branch Library, located less than one-mile north of the site, was recently upgraded and can accommodate the added demand generated by the project.

Although the proposed project would incrementally increase the demand for fire, police, school, parks, and library services, as concluded in the Initial Study, it is not anticipated that the project would create the need for any new facilities beyond those existing or proposed. The project would offset increased demand for parks and recreation facilities by provision of on-site amenities and through compliance with the City's Parkland Dedication Ordinance and Park Impact Ordinance.

Cumulative Impact on Provision of Utilities and Services

The comment is correct that the City has commissioned a study evaluating the potential cumulative impacts of converting non-residential properties to residential uses throughout the City. The purpose of this study is to determine the fiscal impacts to the City of converting lands designated for industrial and commercial uses on the City's General Plan *Land Use/Transportation Diagram* to residential uses.

The San José 2020 General Plan recognizes and anticipates that there may be situations, in which an alternative land use to the use designated on the Land Use/Transportation Diagram would be in conformance with the General Plan. In order to foster and encourage the implementation of General Plan goals and to provide flexibility in achieving the true intent of the General Plan, the City's *Discretionary Alternate Use Policies* identify situations when an alternate use would be permitted without a General Plan Land Use Diagram amendment.

As described on page 40 of the Initial Study, the City's Discretionary Alternate Use Policies allow for higher density residential development (at a minimum of 17 dwelling units per acre) on parcels along major thoroughfares. The project proposes 79 units on the site, at a density of 17.4 units per acre. Therefore, the project is consistent with the General Plan land use designation for the site under the City's Discretionary Alternate Use Policies.

The project site is located within the Westgate area of western San José. The infrastructure (sanitary sewer, water service, and storm drainage lines) in this area is generally newer, and has been designed to accommodate existing and planned development in the area. In addition, the Westgate area of San José includes a mix of residential and commercial development and is better equipped with typical residential services (i.e., parks, libraries, etc.), than areas with primarily industrial or commercial uses. Therefore, the redevelopment of this infill site with 79 residential units is not anticipated to significantly impact the provision of any utilities or services to the area.

Based on the above discussion, the project would not result in a significant contribution to potential cumulative impacts upon the City's ability to provide utilities and services.

B) RESPONSE TO COMMENTS RECEIVED FROM STEPHEN PAHL, DATED JANUARY 27, 2004.

Comment 1: Item 5 [in the Initial Study] discusses hazardous materials and addresses only potential soil contamination... The [MND] does not address the issue that semi-trucks and other large commercial vehicles routinely traverse the southern edge of the [site]... In addition, a gas station is at the corner of Saratoga Avenue and Graves and additionally adds further safety considerations.

Staff Response: This comment suggests that there may be land use compatibility issues between the existing commercial center and proposed residential project, and that future residents on the site could be subject to hazards from truck deliveries to the existing commercial areas and from the operation of the gas station east of the site. Each of these issues is addressed below.

Hazards from Truck Deliveries

The comment suggests that truck deliveries along Graves Avenue and the driveway south of the site represent a potential hazard to the future residents of the proposed development. As noted in the response to Comment A-3 above, the project will not increase the amount of truck deliveries or prevent access by delivery trucks. Trucks and delivery operations are regulated by federal, state, and local laws, and the proposed project would not affect the nature or operation of truck deliveries to nearby commercial uses. There is no information provided in the comment that supports the idea that delivery trucks to a commercial shopping center would pose any hazard to the future site residents. Therefore, it would not result in any environmental impact using the City's thresholds of significance.

Hazards from Gas Station

The comment suggests that the presence of the existing gas station at the corner of Saratoga Avenue and Graves Avenue represents a hazard to future residents of the proposed development. As stated on page 32 of the Initial Study, based on the information and analysis presented in Appendix C of the Initial Study, the potential for contamination as a result of operations at the gas station (Rotten Robbie) would not impact the project site. The operation of gas stations is regulated by federal and state laws that are considered adequate to reduce potential risks to an acceptable level. For those reasons, the presence and operation of the gas station is not considered to result in a significant

environmental impact to the proposed residential development (refer to Appendix C of the Initial Study and the attached memo).

With regard to the issue of land use compatibility, it is not uncommon in the City of San José and other urban areas to have higher density residential uses located on major thoroughfares, adjacent to commercial shopping centers and forming a transition or buffer between the commercial shopping centers and lower density residential neighborhoods. Examples in San José include: near Camden Ave and Almaden Expressway; near Quimby Road and Tully Road; near Murphy Avenue and Oakland Road; and near Saratoga Avenue and Kiely Boulevard. The greater flexibility in site planning, as well as the more substantial building mass in higher density residential developments serve to buffer lower density residential areas from impacts of commercial development (*e.g.*, truck traffic, noise, light, general activity, and litter).

Comment 2: Item 7 relating to noise... No discussion is directed to the noise that will be generated by significant semi-truck traffic proceeding down Graves Avenue in early morning hours for the purposes of stocking the West Valley Shopping Center as well as the significant truck traffic along the southern edge of the property utilized to stock the West Valley Shopping Center. In addition, significant noise is generated during the day time hours by virtue of commercial activity at West Valley Shopping Center as well as significant traffic by virtue of Graves Avenue being utilized as a primary traffic ingress and egress to West Valley Shopping Center and particularly the Orchard Supply operations in that center.

Staff Response: The Initial Study describes noise from traffic on Saratoga Avenue as the dominant noise source at the site, but it is not the only source that was analyzed in the Noise Impact Analysis conducted for the Initial Study (refer to page 44 and Appendix D of the Initial Study). Other sources of noise at the site identified in the Initial Study include operational noise from the commercial uses to the south and east, as well as traffic along Graves Avenue.

The noise impacts upon the proposed residences resulting from the loading dock at the PW market are addressed on pages 46-47 and in Appendix D of the Initial Study. As described on page 47 and in Appendix D of the Initial Study, noise from the loading dock area would not significantly impact the exterior or interior noise levels at the residential units on the site.

While truck deliveries along Graves Avenue and the driveway to the south of the site will result in short-term noise increases, given the volume of deliveries, these events will not significantly impact the day-night-average (L_{dn}) noise levels at the site. In addition, the Initial Study identifies measures to ensure that the interior noise levels at the proposed units will meet the City of San José Noise Element and Title 24 standards of 45 dBA L_{dn} or less (refer to pages 47-48 and Appendix D of the Initial Study). For these reasons, operational noise and delivery truck noise on Graves Avenue will not exceed any of the thresholds of significance identified in the Initial Study and, therefore, will not result in a significant noise impact to the project.

CONCLUSION

Based upon a review of the comments above, none of them present substantial evidence of a “fair argument” (according to CEQA Guidelines Sections 15064, 15070 and 15369.5) that the project may result in significant environmental impacts according to the CEQA Guidelines and the City’s thresholds

of significance. Therefore, as described in the responses above, the Mitigated Negative Declaration meets the requirements of CEQA, and an EIR is not required.

RECIRCULATION OF A NEGATIVE DECLARATION PRIOR TO ADOPTION

The CEQA Guidelines (Section 15073.5) state that a lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. As used in this section, a “substantial revision” of the negative declaration means:

- 1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or
- 2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

- 1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
- 2) New project revisions are added in response to written or verbal comments on the project’s effects identified in the proposed negative declaration which are not new avoidable which are not new avoidable significant effects.
- 3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.
- 4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The letters protesting the adoption of the Mitigated Negative Declaration do not require “substantial revision” of the Mitigated Negative Declaration, as defined above. The comments do not require recirculation of the Mitigated Negative Declaration because none of the comments discussed above: identifies a new avoidable, significant effect; provides evidence that the project would result in any impact of greater severity than already identified in the Initial Study; or determines that the proposed mitigation measures will not reduce potential environmental effects to a less than significant level. For these reasons, the Mitigated Negative Declaration, as currently written, satisfies the requirements of CEQA and does not require recirculation.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission are to (1) uphold the Mitigated Negative Declaration for the proposed project; (2) order revision, and if required, recirculation of the Mitigated Negative Declaration; or (3) require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building & Code Enforcement recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the proposed project.

Stephen M. Haase, AICP, Director
Planning, Building and Code Enforcement

Attachments:

 Traffic-count and level-of-service tables